No. 88-2023

In the Supreme Court of the United States

OCTOBER TERM, 1988

RICHARD R. ELLIS,

Petitioner,

vs.

HENRY L. MUMFORD and EDWARD CAVANAUGH,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONSE TO MOTION FOR DAMAGES FOR FRIVOLOUS PETITION FOR CERTIORARI

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RESPONSE TO MOTION FOR DAMAGES FOR
FRIVOLOUS PETITION FOR CERTIORARI

The Petitioner, RICHARD R. ELLIS, through his undersigned counsel, files this Response to Respondent's Motion for Damages for Frivolous Petition for Certiorari.

Petitioner well respects the rules of procedure which govern this Court, as well as the rules which govern the United States Court of Appeal for the Eleventh Circuit, and the United States District Court for the Southern District of Florida. Petitioner understands the gravity and responsibility of its decision to file its Petition for Writ of Certiorari with this Court and steadfastly believes it has adhered to this Court's rules in presenting a meritorious Petition. It is the uniform application of these rules that Petitioner seeks to obtain in its Petition. Petitioner has properly established the jurisdictional basis for its Petition and has presented the Court with proper legal argument which supports granting the writ requested.

The only frivolous filing with this Court is Respondent's Motion for Damages. Respondent's Motion does no more than reargue Respondent's substantive position below. The Motion seems less concerned with the serious issues presented by the Petition to this Court than with unwarrantedly challenging the motives and integrity of Petitioner's trial counsel in pursuing its clients' legal rights. The interposing of such fallacious arguments appears designed solely as an

attempt to divert attention from the pertinent issues raised by Petitioner. Petitioner can only view such tactics as a concession by Respondents of the merits of its Petition.

No matter the ultimate resolution of the Petition, Petitioner has at all times proceeded in good faith, imposing no undue hardship on Respondents. From a review of Respondents' Brief in Opposition to Petition for Writ of Certiorari, it is clear that Respondents spent little time and energy in the preparation and filing of their Response. The filing of the Petition in no way prejudices any rights of Respondents and causes no delay to or unreasonable impact on Respondents. Petitioner's actions in no way warrant an award of damages to Respondents.

CONCLUSION

The Court should deny Respondent's Motion for Damages for Frivilous Petition for Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of this Petition have been furnished by United States Mail to Julius Parker, Jr., Esquire, of the Law Firm of Haben, Parker, Skelding, Costigan, McVoy & Labasky, Post Office Box 669, 318 North Monroe Street, Tallahassee, Florida 32302, on this 19th day of July, 1989.

PHILLIP C. GILDAN

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